

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PHILLIP PAPPAS,

Plaintiff,

v.

NO. C 09-3246 WHA (PR)

**ORDER GRANTING DEFENDANTS'
MOTION TO SCREEN CASE AND
DISMISSING CASE WITH LEAVE
TO AMEND**

W. S. WADKINS; W. J. HILL; I.
GUERRA; J. LOZADO; W. B.
CHILDRESS; R. HALL; NOLA
GRANNIS; R. GOMEZ; GASPAR;
DAVID MENDEZ; C. SEKULA; M.
PRATTI; M. SOLARIO; VIDAURRI;
E. MCCANT; F. A. RODRIGUEZ; J.
HUTCHINS; GARZA; KEN CLARK;
PIO ENRIQUEZ; STURGES; A.
LOPEZ; R. VAN VUGT; K.
SANTORO; J. PRUD'HOMME; D.
SCHOTTGEN; L. SMITH, a.k.a. L.
ZINANI; AHLIN; TOM EMIGH;
PLOUGH; T. PRICE; D. L. PORTER;
P. BRANNIN; K. ESTES; E.
AGUIRRE; R. JORDT; CRAIN;
SHAW; M. ROSAS; D. STOHL; D.
DUVALL; S. CHILDRESS; F.
NAVARETTE; WILSON; J.
HOLINSKI, a.k.a. J. KAISER; E.
CAMPOS; S. MARTIN;
CHURLESON; DOWLING; D.
TREVINO; L. CARTAGENA;
MORENO; K. HIXON; G.
CORNWALL; R. MANUEL; J.
BATCHELOR; R. SADDI; G.
ABREU;
B. SWEENEY; C. RAMIREZ; R.
IBARRA; R. VELASQUEZ; M.
VIEIRA; M. ZUNIGA; Y. YEHUDA;
G. GUERRERO; THORPE; TOMMY
WAN; JONES, III; ANTHONY
KANE;
M. ORGAZAN; T. LINN;
KIMBERELY A. SMITH; S.
LABARE; W. RIVERA; J. WARD; K.
ALLISON; LINNETTE AUSTEN; and
SANDRA MACIEL,

Defendants.

INTRODUCTION

Plaintiff, an inmate at California State Prison-Solano in Vacaville, filed this case in Santa Clara County Superior Court. It was removed to this court by defendants Austin, Kane, LaBare, and Maciel. The removal was subsequently joined by defendants W. B. Childress, I. Guerra, G. Guerrero, W. J. Hill, J. Lozado, and M. Zuniga.¹ Defendants have filed a waiver of their right to reply to the complaint and a motion for the court to screen it. The motion (document 3) is **GRANTED**. The screening is performed below.

DISCUSSION

A. STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative

¹ When the word "defendants" is used below it refers to only the defendants who removed the case.

1 level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A
2 complaint must proffer "enough facts to state a claim for relief that is plausible on its face." *Id.*
3 at 1974.

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:
5 (1) that a right secured by the Constitution or laws of the United States was violated, and (2)
6 that the alleged deprivation was committed by a person acting under the color of state law.
7 *West v. Atkins*, 487 U.S. 42, 48 (1988).

8 **B. LEGAL CLAIMS**

9 The complaint covers a wide variety of prison conditions at two different institutions
10 where plaintiff was housed, the California Training Facility at the California Substance Abuse
11 and Treatment Facility. The complaint is 147 pages long, not counting what appears to be
12 hundreds of pages of attachments, contains 18 sections, and names 80 defendants, the majority
13 of whom many of whom plaintiff has not provided a location. The complaint is extraordinary
14 broad, and appears to touch upon everything plaintiff found objectionable between 2005 and
15 2007, including allegations about retaliation, confiscation of legal materials, conspiracy,
16 "cover-ups," interference with mail, limitations on access to the yard, the denial of parole, cell
17 moves, job changes, disciplinary actions, the inmate appeals process, threats, "harassment,"
18 "intimidation," and indifference to his medical needs, among a host of other allegations.

19 The complaint has several deficiencies that require an amended complaint to be filed.
20 First, the complaint has several claims that are not properly joined under Federal Rule of Civil
21 Procedure 20(a) concerning joinder of claims and defendants. Rule 20(a) provides that all
22 persons "may be joined in one action as defendants if there is asserted against them jointly,
23 severally, or in the alternative, any right to relief in respect of or arising out of the same
24 transaction, occurrence, or series of transactions or occurrences and if any question of law or
25 fact common to all defendants will arise in the action." As described above, plaintiff's claims
26 cover a broad array of different incidents by different individuals at a minimum of two
27 institutions over the course of approximately two years. In his amended complaint, plaintiff
28 may only allege claims that (a) arise out of the same transaction, occurrence, or series of

1 transactions or occurrences and (b) present questions of law or fact common to all defendants
2 named therein. Plaintiff may not include in a single complaint everything that has happened to
3 him over the last four years in prison that he finds objectionable. He must choose what claims
4 he wants to pursue that meet the joinder requirements; if he asserts improperly joined claims in
5 his amended complaint, they will be dismissed.

6 Second, the complaint does not comply with the requirement that the averments be
7 "simple, concise, and direct." Federal Rule of Civil Procedure 8(a) requires that the complaint
8 set forth "a short and plain statement of the claim showing that the pleader is entitled to relief."
9 Rule 8(e) requires that each averment of a pleading be "simple, concise, and direct," and the
10 failure to adhere to this requirement may be the basis for dismissal. *McHenry v. Renne*, 84 F.3d
11 1172, 1179 (9th Cir. 1996) (affirming dismissal of complaint that was "argumentative, prolix,
12 replete with redundancy, and largely irrelevant"). The complaint here does not comply with
13 Rule 8(e). There are not simple, concise and direct averments. Instead, the rambling factual
14 allegations include unnecessary minutiae about dozens of interactions between plaintiff, other
15 inmates and staff, and the complaint is replete with conclusory argument about retaliation,
16 cover-ups and conspiracies.

17 Third, it appears that plaintiff has improperly included as defendants persons who did no
18 more than fail to grant his administrative appeals. There is no constitutional right to a jail
19 administrative appeal or grievance system. *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir.1988);
20 *see Antonelli v. Sheahan*, 81 F.3d 1422, 1430 (7th Cir. 1996) (prison grievance procedure is
21 procedural right that does not give rise to protected liberty interest requiring procedural
22 protections of Due Process Clause). Plaintiff had no federal constitutional right to a properly
23 functioning appeal system. An incorrect decision on an administrative appeal or failure to
24 handle it in a particular way therefore did not amount to a violation of his right to due process.
25 The descriptions of his efforts to pursue inmate appeals should not be repeated in the amended
26 complaint.

27 CONCLUSION

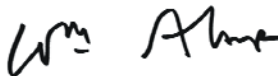
28 1. The complaint is **DISMISSED** with leave to amend, as indicated above, within thirty

1 days from the date of this order. The amended complaint must include the caption and civil
2 case number used in this order (No. C 09-3246 WHA (PR)) and the words AMENDED
3 COMPLAINT on the first page. Because an amended complaint completely replaces the
4 original complaint, plaintiff must include in it all the claims he wishes to present. *See Ferdik v.*
5 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the
6 original complaint by reference. Failure to amend within the designated time and in accordance
7 with this order will result in the dismissal of these claims.

8 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court
9 informed of any change of address by filing with the clerk a separate paper headed "Notice of
10 Change of Address." Papers intended to be filed in this case should be addressed to the clerk
11 and not to the undersigned. Petitioner also must comply with the Court's orders in a timely
12 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
13 pursuant to Federal Rule of Civil Procedure 41(b).

14 **IT IS SO ORDERED.**

15 Dated: October 20, 2009.

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18 WILLIAM ALSUP
19 UNITED STATES DISTRICT JUDGE
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United States District Court

For the Northern District of California

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